

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:08cv196**

<b>AMY STROUPE,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>Vs.</b>	)	<b>ORDER</b>
	)	
<b>BRANCH BANKING AND TRUST</b>	)	
<b>COMPANY,</b>	)	
	)	
<b>Defendant.</b>	)	
<hr style="width:40%; margin-left:0"/>	)	

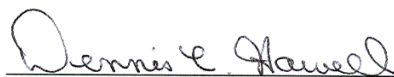
**THIS MATTER** is before the court on defendant's Response in Opposition to Plaintiff's Notice of Preservation of the Plaintiff's Right to Respond to Defendant's Motion to Dismiss. In making this motion, defendant has misapprehended the root of the problem that the court has sought to resolve as well as the effort of the court at preservation of scarce judicial resources. While staying proceedings in this action pending resolution of matters in companion litigation, the court directed defendant to bring this action into compliance with the Local Civil rules of this court by filing a responsive pleading or a motion to dismiss, a step defendant had overlooked after removing this action to this court. In granting defendant such leave, it was not the intent of the court for full briefing of any motion to dismiss to then occur. Indeed,

such briefing would defeat the purpose of the stay. Plaintiff has, within the meaning of the stay, properly given notice that it intends to respond to the motion to dismiss after the stay is lifted. For defendant to now seek a finding by this court that its motion is “unopposed” - - the functional equivalent of a dismissal by procedural default - - is well outside the intent and spirit of the stay previously entered. The defendant’s motion will, therefore, be summarily denied.

### **ORDER**

**IT IS, THEREFORE, ORDERED** that defendant’s Response in Opposition to Plaintiff’s Notice of Preservation of the Plaintiff’s Right to Respond to Defendant’s Motion to Dismiss (#39), deemed to be a motion for a judicial determination that its Motion to Dismiss is unopposed, is **DENIED**.

Signed: October 9, 2008



Dennis L. Howell  
United States Magistrate Judge

